“THIS IS NOT A PIPE!” Judicial normality and obliteration of the obvious in a Moroccan case of Islamist terrorism

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Abstract

Considered from a praxeological perspective, the judicial process is a performance and an achievement in which all members compete to “make law”, i.e. to demonstrate their competence to act within this framework and to produce results that are, formally at least, in line with the requirements of procedural correctness and legal relevance. The judicial production of law is the routine accomplishment of a set of things seen and known, constrained by textual rules, precedents and professional practices, but neither remarkable nor noticed. This, at least, in ordinary contexts. In exceptional contexts—those of exceptional justice, for example—things are different. Here, the routine performance of legal work has more to do with the production of a formally plausible but effectively dubious fiction. Where, in ordinary contexts, we observe an unremarkable production of normality, in exceptional contexts, this production becomes remarkable due, on the one hand, to the observable gap between the facts-as-judicially-established and the facts-as-common-sense-can-assume, and, on the other, the motivations-as-judicially-formulated and the motivations-as-reasonably-imagined. In this contribution, we present a Moroccan case of Islamic terrorism, describe how it was handled by the Criminal Chamber of the Rabat Court of Appeal, which is responsible for terrorism cases, and report on the work of this court in producing a legal normality, at the cost of denying the obvious and asserting a surreal truth in which respect for form takes precedence over credibility.

1. INTRODUCTION

Considered from a praxeological perspective, the judicial process is a performance and an accomplishment in which all the members contribute to 'making law', i.e. to manifest their competence to act within this framework and to produce results that are, at least formally, in conformity with the requirements of procedural correctness and legal relevance. The judicial production of law is the routine performance of a set of things seen and known, constrained by textual rules, precedents and professional practices, but neither remarkable nor noticed. This, at least, when law and justice follow their ordinary course. Is it different in extraordinary situations, as in cases of terrorism,[1] or does the same routine operate because it is about the same professional activity?

In exceptional contexts—where summary, specific or derogatory justice unfolds, for example, because of the imperatives of order and security—it is the same, but not totally. Here, the routine performance of legal work is more a matter of producing a formally plausible but effectively dubious fiction. In that respect, some silences within judicial documents belong to a surrealistic performance. Whereas the demonstration of procedural correctness and legal relevance is a universal component of law and justice in their routine accomplishment, it becomes, in exceptional contexts, a performance aiming to produce an apparent normality, notwithstanding all that testifies to the contrary. The production of normality is the "same", whether routine or extraordinary, and the trial for facts of terrorism we study is similar to other trials regarding the same issue, including in non-authoritarian contexts. It is nonetheless specific to a context—that of an authoritarian regime—whose specificities it affirms through secondary details that are just as routine as the others.

In Morocco, Law 03-03 on the repression of terrorism, promulgated by royal decree after the Casablanca attacks of 16 May 2003, establishes the legal framework within which the criminal chamber of the Rabat Court of Appeal in charge of terrorism cases adjudicates. It is a jurisdiction dealing with extraordinary cases but not an exceptional jurisdiction. The study of the so-called "Imlil" trial conducted by this court reveals a mechanism by which justice on extraordinary questions is based, on the one hand, on the exhibition of an accomplishment that conforms to ordinary justice and, on the other, on the "invisibilization" of contrary evidence. Everything is put in place so that the narrative of respect for the rule of law and the proper administration of justice can be deployed in a plausible way, while at the same time an active process of obliteration of anything that might be contrary to this narrative is undertaken, with the affirmation of a surrealist truth taking precedence over the concern for credibility.

As part of this surrealist performance, in addition to the narrative of procedural correctness in the conduct of the trial and of legal relevance in the accompanying legal characterizations,

1 A brief note on the use of the terms "ordinary", "extraordinary" and "exceptional". First of all, it should be emphasized that these terms are not used in a technical sense, but in their usual sense that is neither specifically legal nor particularly Moroccan. To put it briefly, we consider that laws and judgments relating to terrorism are the result of "exceptional" circumstances, are not part of the "ordinary" course of law and, in this sense, belong to the "extraordinary". This does not prevent them from being the subject of a whole series of practices designed to "normalize" them, to erase what might appear to be "exceptional" law and justice.

there is a tendency to expunge any religious motivation from the judgement in cases involving persons accused of terrorism and claiming to follow a jihadist version of Islam. In this context, the exhibition of normality—the "due process of law"—involves an active process of invisibilization of anything that might be contrary to it, such as the infringement of the rights of the defense or the religious motivation of the accused, which would open up the possibility of a "political" characterization of the acts on trial, with all that might ensue in the form of claims of "mitigating motives" or questioning the trial and Moroccan institutions' legitimacy. Thus, the exhibition of normality and the obliteration of the obvious work together to impose a restrictive framework for "holding the debate".

In this contribution, we proceed in four stages. We begin by reviewing the literature on law and justice in an authoritarian context to show how, in whole or in part, it misses or neglects at least two fundamental elements: on the one hand, the very act of adjudicating, i.e. the modalities of jurisdictional practice; on the other hand, the internal contextuality of the act of adjudicating, i.e. its differentiated character according to the field of law it concerns. We also present the approaches to law to which we are attached (Section 1). Next, we briefly present the legal and factual background elements necessary to understand the origins, the course and the verdict of the Imlil trial. We also show how these elements appear in the case file documents (Section 2). In a third step, based on the documents of the Imlil case, we look at what the judgement in an authoritarian context shares with its counterpart in a liberal context, what we could call a universal (or a "simplest systematics", to paraphrase the title of Sacks et al.'s seminal study, 1974) of judicial activity: the production of procedural correctness and legal relevance, through which the judges accomplish and endeavor to show the regular and competent accomplishment of their work (Section 3). Still using the same material, we show how, in an authoritarian context marked by both the consenting subordination of the judiciary to the executive and the differential of authoritarianism according to the areas of law involved, judgements for acts of terrorism are concerned with carrying out a double operation: on the one hand, an exhibition of a factitious normality, which overdetermines the conformity of the trial to the standards of normal judicial activity; and, on the other hand, an obliteration of an obvious reality, which underdetermines what there may be as elements contrary to the dominant legal and political master-narrative (Section 4). Our analysis draws heavily on the contributions of ethnomethodology, particularly the study of legal ethnomethods, and we conclude with some developments inspired by it on the mechanisms of production of normality, evidence, plausibility and judicial truth.

At this point, we would like to make one small point clear. By authoritarianism, we mean three cumulative characteristics: (1) at least one of the major rulers or the major ruler does not depend directly on election; (2) certain positions concerning the functioning of institutions or the structuring of public space are not publicly debatable; (3) respect for the rule of law can, at least punctually (but not exceptionally), be suspended. This translates into the exercise of law and justice at two levels. At the judicial level, where judges are effectively subordinate to what is produced by the police, in the conduct of the investigation, and the Public Prosecutor's Office, in the investigation of the case. At the legislative level, where we observe the adoption of laws providing the police, the Public Prosecutor's Office and judges with the means to work outside the scope of ordinary law, bringing into the ordinary a form of justice

that would otherwise be the exception, thus sparing judges the need to force legality and produce impossible qualifications. This authoritarian context of the exercise of law and justice does not exert its constraint homogeneously. As Stern (2023) points out, "authoritarian law is not uniform". This is reflected in significant contrasts across authoritarian systems. More than that, it is reflected in clear differences, within the same authoritarian system, between different areas of law (criminal law, constitutional law, family law, commercial law, etc.) and the judicial practice relating to them. This is even apparent within the same judgment, with all that this judgment owes to the "ordinary law".

It is also important to clear up a misunderstanding: this is not an article on criminal law, international criminal law and the criminalization of terrorism. It is an article on a ruling by the Rabat Court of Appeal in a case of terrorism, a careful examination of which reveals legal practices in an authoritarian context, according to the definition we have just given. It is therefore a question of studying in textual detail what this judgment tells us and shows us, but not of dealing with the echoes of the case in Moroccan society or Moroccan legal doctrine, nor of making a sociological study of the members of the Court. In this sense, the judgment is taken for—and only for—itself, and not as an explanatory resource for questions that are no doubt interesting, but in reality other than those we are asking. The law is not considered here from the angle of critical theory, as the pure product of a balance of power. Nor are judgments seen as the mere manifestation of an ideology, or judges as the servile relays of an authoritarian sovereign. More precisely, we do not start from such a premise, but seek to account for what can be seen of law and justice in Morocco in this singular case, from the judgment itself.

2. USES OF LAW IN AN AUTHORITARIAN CONTEXT

It is not necessarily the whole of law and justice that is constrained by the authoritarian context. As we have shown elsewhere (Blouët and Dupret, forthcoming), there are whole areas of law that are not specifically marked by this context. In the same way that there are authoritarian legal practices in a democratic context, there is the existence of an ordinary and routine law in an authoritarian context, which functions relatively indifferently to the latter. However, certain specific trials, more or less numerous depending on the country, present characteristics that are visibly marked by authoritarianism. For these trials, authoritarianism is an endogenous property, a clear element of their "relevant context" (Dupret and Ferrié 2008).

A large part of the literature on law in an authoritarian context does not take law seriously. On the one hand, there is a literature of a rather dogmatic nature, which evaluates the law in terms of what it should be according to democratic standards (Fombad 2011), in comparison to other countries (Faundez 2006) or according to normative theories (Biagi 2016), possibly with recommendations on how to democratize systems (Miller and Aucouin 2010; Partlett, 2012; Philippe 2015). On the other hand, there is a more descriptive literature that focuses on describing the content of positive law, but at the level of legislation rather than case law (Brown 2003; Ginsburg and Simpser 2013; Frankenberg and Alvar Garcia 2019; Dixon and Landau 2021). If constitutional courts are sometimes studied, it is from a political perspective, as a testimony to the law and justice's autonomy or, on the contrary, to its subordination to politics (Hirschl 2004; Moustafa 2007; Bernard-Maugiron 2004). Some studies also focus on

the 'counter-hegemonic' instrumentalisation of law by oppositions (Parslow 2018; El-Ghobashy 2008)

In general, and with the exception of certain high-profile trials, the literature on law and justice in authoritarian contexts does not really focus on the trial in and of itself. This is sometimes because this literature considers that such justice is only a parody, a masquerade, a dramatization of power whose judicial performance is of no interest. So it is with Deniz Yonucu (2018), for whom "the ambiguity, illegibility and unpredictability of Turkey's anti-terror law bestows upon the law a mythical and/or sovereign force that controls one's present and future, and hence one's fate", or with Başak Ertür (2015), who intends to conceptualise the spectacles and spectres of justice, at the intersection of the law and the political.

The lack of interest in the trial itself is sometimes due to the fact that it is considered as an explanatory resource for broader historical-political patterns, and not for what happens in the court and how it happens. This is the case with the literature on "the politics of courts in authoritarian regimes" (Ginsburg and Moustafa 2008). This type of literature is full of valuable lessons on the differentiated uses of law, depending on whether it aims to exercise a repressive function or to guarantee a certain predictability for commercial transactions (Ginsburg and Moustafa 2008); on the search for algorithms allowing the homogenization of judicial solutions (Stern 2023); on the increasing "managerialization" or "administrativization" that reduces the share of legislative and judicial powers to the benefit of the executive alone and its technocratic apparatus (Goupy 2022). However, it forgets about the trial, what it exhibits, what it makes it possible to show about the accomplishment of law in action. In other words, there is in this literature a kind of "missing-what" (Garfinkel 1967) that prevents the process from being given all its phenomenological and heuristic depth.

For our part, we would like to describe as closely as possible the practices of production, interpretation, decision and execution of law in an authoritarian context (Dupret and Ferrié, 2014), so as to highlight why the rule of law is a technique valued by authoritarian governance (rule by law). Authoritarian regimes make extensive use of law and legal rules, as well as judicial institutions. Hypotheses can be made about this: These regimes provide non-politicized spaces of adjudication for reasons of legal stability and security; they avoid exposing themselves to litigation providing it does not threaten their power; the staging of respect for law and justice provides internal and external legitimacy dividends; delegating certain powers to the judiciary is advantageous in terms of control and cohesion (Ginsburg and Moustafa 2008). However, our aim is not to test these hypotheses, but to explore how these possible properties of adjudication in an authoritarian context are translated into legal ways of doing things, which we have called "legal ethnomethods" (Dupret et al. 2015). This approach implies considering that, above all else, the members (a term we prefer to that of actors because it is not loaded with drama and refers to the idea of a community of language and practice) are committed to "acting legally", to "making law", to acting as competent "legal practitioners", to "doing being legal".

This practice of law is exercised within a constraining framework, what could be called the internal context of the activity, which is the institutional organization, the procedures, the available characterizations, the formal and informal norms that can be applied, etc. Among legal theorists, this idea can be found in the theory of legal constraints developed by Michel Troper

and Véronique Champeil-Desplats (Troper et al. 2006), which aims to explain why legal practitioners, despite their interpretive freedom, make decisions which, by their very nature, tend to be conformist. These constraints are essentially related to the position occupied by these practitioners in the legal system and the assumption that they care about their interests in this system, whether to maintain their position (institutional constraints: hierarchical relations, career prospects) or to protect their decisions from censure (argumentative constraints: decisions based on arguments perceived as more admissible at the subsequent jurisdictional stage). The theory of legal constraints, although not specific to authoritarian contexts, certainly helps to describe how, in such an environment, legal practitioners concretely articulate the pressures of the executive and their judicial practice, and how they have a great deal of freedom over the means of their decisions, but not over the verdicts to be pronounced.

The approach to law through technicalities provides a heuristic complement to the theory of constraints. In a recent article, Frédéric Audren (2022) outlines a perspective that, following the anthropologist Annelise Riles (2005, 984–5), focuses on "technical legal knowledge itself—the theories, the models, the arguments, the techniques" and "bring[s] the technical into view not as an effect or a byproduct, a tool of more important agents and forces, but as the protagonist of its own account." For Riles, the technicality of law refers to "a professional configuration involving knowledge including artefacts ('What kinds of objects, or effects, does legal knowledge produce?'), agents ('Who "uses" or "makes" legal knowledge?'), a temporality ('What conceptions of past, present or future are at work in legal knowledge?'), an aesthetics ('What appreciations of legal form are entailed in legal knowledge?') or an epistemology ('What does it mean to 'know' particular facts in legal terms?')" (Audren 2022, citing Riles 2007 887–8). Legal technique, says Audren (2022), is "the activity of putting into form in order to ensure the concretization of law". Vincent Réveillère (2018) invites us to take this technicality of law into consideration. According to him, it is advisable to "take the practice of lawyers' knowledge seriously, i.e. to understand it in its own terms" and thus to oppose "a purely external apprehension of lawyers' practices which, in a reductionist way, would only perceive them as a reflection of something more fundamental: the political or economic power relations" (quoted by Audren 2022). This approach through technicalities makes it possible to apprehend the law from the angle of its engineering (Frydman 2013, 97), which can be at the service of the most diverse societal projects, including authoritarian ones.

The praxeological approach that we promote is essentially textual, based on the idea that texts are drafted "for all practical purposes" and inform us on the details of their constitutive practices. It seeks, through the examination of legal ethnomethods, to describe the grammar of law that practitioners seek to perform (Garfinkel 1967; Sacks, 1985; Travers and Manzo 1997), often with the visible concern, including in an authoritarian context, to "project competence" (Stern, 2023). This involves problematizing their practical legal epistemology by analyzing the linguistic variations and ambiguities that reflect the routine of their activity (Wittgenstein 1963, para. 496; Lynch 1993) as well as the impact that authoritarianism has on it. A trial, for example, is sequenced into steps that are formal but nevertheless respond to a series of observable accomplishments by the participants. This is the case with the production of a procedurally correct decision, which does not correspond to a set of abstract rules drawn from an external and overarching legal system, but to routine and bureaucratic constraints on judicial

setting's members (Atkinson and Drew 1979; Matoesian 2001; Scheffer 2010). Participants in court trials also orient to what we might call legal relevance, which corresponds, in part but not entirely, to the process of judicial characterization, i.e. the matching of "facts" and "rules" (Sudnow 1965; Dupret 2011). This orientation to both procedural correctness and legal relevance is well captured by the notion of "instructed action" (Livingston 1995; Lynch and Lindwall 2023): rules are at the same time formulation and implementation, and their meaning emerges through their practice, i.e. the activity of applying and interpreting them, or even circumventing or violating them. It should be noted that, while being informed by procedural provisions, legislation and judicial precedents, court decisions are also instructing[2]: they may in turn subsequently constitute a precedent, in line with what Garfinkel (1967) calls the "documentary method of interpretation".

3. WHAT IS THE THREAD OF THE CASE?

Rather than attempting to place the context of the Imlil case from an overhanging point of view, we prefer to propose elements of background understanding based on what the judges have at their disposal and whose relevance can be seen in the various documents in the trial file.

The legislative background of the trial is constituted by Law 03-03 on the fight against terrorism. This law was adopted following the Casablanca bombings of 16 May 2003, which prompted Morocco to review its legislation. Until then, cases of a terrorist nature were tried under the provisions of the ordinary criminal code. The need to provide a legislative basis for law enforcement agencies, combined with the need to ensure that these texts respected the rules of international law and in particular human rights law, led the country to add to the Penal Code and the Code of Criminal Procedure a multitude of specific provisions on the fight against terrorism. Modelled on the French anti-terrorism law of September 1996, this law, which was supposed to guarantee human rights, only reduced the guarantees of a fair trial, in particular by allowing searches and home visits at any time, extending the maximum duration of police custody to 12 days or delaying the accused's communication with his lawyer for up to 48 hours. Judges' orientation to the anti-terrorist legislation is reflected in the judgment as follows:

> The lawyer of the accused 4E contests the minutes of the preliminary investigation and asks for them to be annulled, as his Swiss client was interrogated and signed the minutes without the presence of a sworn translator, thus failing to comply with the provisions of Article 21 of the Code of Criminal Procedure. (Criminal Court, decision no. 120, file 59/2019/2630, session of 30 October 2019, 18)

> Accused 1C and his court-appointed lawyer denounced the torture he had undergone and argued that he had signed his minutes without having the opportunity to read them (without having had access to a lawyer). (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 24)

2 Lynch and Lindwall (2023) call it "instructive". We did not have knowledge of their expression before the completion of our draft.

Twelve years later, in May 2015, Law No. 86-14 was adopted, which amended and supplemented certain provisions of the Criminal Code and the Code of Criminal Procedure relating to the fight against terrorism. The scope of action has thus been broadened, in particular by Article 218-1-1, which allows for the trial of terrorist acts perpetrated outside the national territory; by Article 218-2, which takes into consideration the propaganda, apology or promotion of terrorist entities, organizations, gangs or groups; and by Article 218-5, which punishes persons inciting to commit one of the offences provided for in Chapter 1 bis of Law No. 03-03 with imprisonment of five to fifteen years and a fine ranging from 50,000 to 500,000 dirhams, or by Article 711-1 of the Code of Criminal Procedure, which implicates "any Moroccan or foreigner who, outside the territory of the Kingdom, has committed, as perpetrator, co-perpetrator or accomplice, a terrorist offence, whether or not it is aimed at harming the Kingdom of Morocco or its interests."

Also in 2015, the Directorate General of Territorial Security (DGST) created a tactical judicial police corps to combat organized crime, drug or arms trafficking, kidnapping, as well as attacks on state security, including terrorism. This new service, presented as the armed wing of the DGST, is called the Central Bureau of Judicial Investigations (BCIJ). Although the actions of this service are often highly publicised, nothing is known about the methods used by its members to investigate and collect confessions. Several human rights organisations have questioned the methods of the BCIJ, whose reports are often contested by defendants, who sometimes claim to have confessed to crimes they did not commit under torture. Together with the investigating judge, the BCIJ plays a central role in producing the evidence on which the trial judges base their trials.

> Defendant 1C denied some of the charges, arguing that some of the facts were transformed by the BCIJ, that he was never a supporter of DAESH and that he was innocent (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 24)[3]

The judgment handed down on 30/10/2019 by the criminal chamber of the Rabat Court of Appeal in charge of terrorism cases, in the so-called Imlil case, relates to facts dating back to December 2018. While the Islamic State was at the height of its power, four young people from the Marrakech region decided to take action. A few weeks earlier, they had recorded a video in which they pledged allegiance to Abu Bakr al-Baghdadi, the caliph of the Islamic State. The four individuals went to the village of Imlil, at the foot of the Toubkal mountain in the High Atlas, with the aim of finding Western tourists in order to assassinate them. On the night of 16–17 December, they spotted two Scandinavian tourists in their twenties, a Norwegian and a Danish, setting up their tent for the night. Three of the four individuals waited until dawn to carry out their crime, "in the name of God", as attested by multiple audio excerpts from the video they had recorded. They then fled to southern Morocco, hoping to

3 DAESH (*Dâ'ish*) is the Arabic acronyme for *al-Dawla al-islâmiyya fî-l-'Irâq wa-l-Shâm*, The Islamic State in Iraq and Sham, i.e. the Levant).

reach Mauritania and from there the Boko Haram group. They were arrested by the police in Marrakech, on a bus bound for Agadir.

> Immediately after the double murder, the three defendants left the scene on foot, leaving behind their belongings, including the identity document of defendant 1A. As they fled, defendant 2A told the other two that he had [stabbed and decapitated the second victim] and placed his head in front of the tent for defendant 3A to film. The three defendants continued their flight, during which they took care to clean themselves of their victims' blood and disseminate the videos of the double murder to jihadi groups via the TELEGRAM application. They then went to the house of the accused 4D who offered them the sum of 1000 dhs and some foodstuffs enabling them to continue their flight to Marrakech with the aim of reaching Agadir and then Mauritania via the southern borders of Morocco (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 65–66)

> In his confession, defendant 1A stated that, immediately after the crime, he went with his two accomplices to defendant 4D who gave them the sum of 1000 dhs, allowing them to partially finance their flight to the south of Morocco with the aim of joining Mali and the Boko Haram movement. (Ch.crim., decision no 120, file 59/2019/2630, session of 30 October 2019, 34)

The arrest of these four individuals lead to the arrest of some twenty alleged accomplices. All being prosecuted for:

- planning terrorist acts inside the Kingdom targeting tourists, elements of the Gendarmerie and the Security and certain tourist sites, failure to denounce a crime, apology for terrorism and murder of two Scandinavian tourists.
- constitution of a gang to prepare and commit terrorist acts, premeditated attack on life, possession of firearms and attempt to manufacture explosives in violation of the law, as part of a collective project aimed at seriously undermining public order. (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 8-15)

The BCIJ and an investigating judge investigated the case and prepared the necessary arguments for judges to conduct the trial. After several weeks of investigations and hearings and an appeal, 24 convictions were handed down, ranging from 5 years in prison for the accomplices to the death penalty for the four main defendants. Their appeal in cassation was rejected. In June 2021, the administrative court also admitted the responsibility of the Moroccan State and granted compensation of 5 million dirhams to the family of one of the two victims in reparation for the moral damage suffered by the parents. In February 2022, this sum was reduced to one million dirhams by the Administrative Court of Appeal of Marrakech.

These criminal convictions are based on the provisions of Articles 218-1, 218-1-1, 218-2, 218-5, 218-7 and 218-8 of Law No. 03-03 of 28 May 2003 on the fight against terrorism as amended and supplemented by Law 86-14 of 20 May 2015, as well as the provisions of articles 114, 129, 154, 156, 267, 393, 394, 395 and 399 of the Criminal Code and articles 5-8 and 3-9 of the dahirs regulating the right of association and that relating to public gatherings of 15 November 1958, as amended and supplemented on 10 April 1973 and 2 July 2002. Article

218-1 defines the constituent elements of a terrorist act, namely in our case: "the voluntary attack on the life of persons or their integrity, or on their freedom, the kidnapping or sequestration of persons." In addition, Article 218-7 provides for heavy penalties up to the death penalty when the acts committed constitute offences under Article 218-1, supplemented in 2015 by Article 218-1-1, which considers as terrorist offences:

- joining or attempting to join, individually or collectively, in an organized or unorganized manner, terrorist entities, organizations, gangs or groups, regardless of their form, purpose or location, even if the terrorist acts are not intended to harm the Kingdom of Morocco or its interests;
- receiving or attempting to receive training or instruction, in whatever form, nature or duration, inside or outside the territory of the Kingdom of Morocco, with a view to committing an act of terrorism inside or outside the Kingdom, irrespective of the occurrence of such an act;
- enlisting, training or instructing or attempting to enlist, train or instruct one or more persons with a view to their joining terrorist entities, organizations, gangs or groups inside or outside the territory of the Kingdom of Morocco;

Apology for acts of terrorism, whether verbal, written, printed, or by electronic means of information, is punishable by imprisonment for 2 to 6 years and a fine of 10,000 to 200,000 dirhams (Article 218-2). Article 218-5 states that "anyone who, by any means whatsoever, persuades, incites or provokes others to commit one of the offences provided for in this chapter shall be liable to the penalties prescribed for that offence." The law:

> punishes with imprisonment from five to ten years any person who, having knowledge of plans [...] constituting terrorist offences, does not [...] report them to the judicial authorities [...] However, the court may [...] exempt from the penalty relatives or relatives up to and including the fourth degree of kinship of the perpetrator, co-perpetrator or accomplice of a terrorist offence (Article 218-8).

In our case, the second part of this article was not taken into account, as defendant 1J, who is the cousin of defendant 1B, was sentenced to 6 years imprisonment for non-reporting.

Article 114 of the Criminal Code states that: "Any attempt to commit a crime that has been manifested by a beginning of execution or by unequivocal acts directly tending to commit it, if it has not been suspended or if it has only failed to have an effect due to circumstances beyond the control of its perpetrator, shall be treated as a completed crime and punished as such." Article 129 makes it possible to consider as accomplices to an offence classified as a felony or misdemeanor those who, without direct participation in this offence, have:

- by gifts, promises, threats, abuse of authority or power, machinations or culpable artifices, provoked this action or gave instructions to commit it ;
- procured weapons, instruments or any other means to be used in the act knowing that they were intended to be used in it;
- with knowledge, aided or abetted the perpetrator or perpetrators of the act, in the acts which prepared or facilitated it;

- with knowledge of their criminal conduct, habitually provided accommodation, a place of retreat or meeting places for one or more criminals carrying out robberies or violence against State security, public peace, persons or property.

In the Imlil case, this article was used as the legal basis for the conviction of twenty additional individuals who were assigned roles of accomplices to varying degrees, while some maintained that they had not been in contact with the four main convicts for several years and others claimed to have no knowledge of their terrorist plans.

4. OBJECTIVE FACTUALITY, PROCEDURAL CORRECTNESS AND LEGAL RELEVANCE: THE ROUTINE HORIZON OF THE EXTRAORDINARY

"Legal activity consists primarily of a series of conceptual, topical, linguistic and logical operations. Legal actors manipulate material objects (codes, documents, journals, etc.), reason, conceptualize, interpret, argue, formalize or motivate" (Audren, 2022). We might call it a "simplest systematics" of adjudication. In an authoritarian context, dispensing justice is no exception to this constant. First and foremost, all the protagonists in the trial are committed to "making law" and "doing being legal", i.e. publicly demonstrating their attachment to the normal performance of law that respects its technical constraints and practical objectives. These consist mainly in attaching the incriminated facts to a legal category that is available and likely to produce the expected legal effects, while respecting the procedures. This can be observed at all stages of a case, from the moment the case is brought before the courts to the execution of the final verdict. For its "practitioners" (all those involved), the performance of the law is an ordinary, routine matter, entirely focused on the "operations" (Thomas 2011) to be carried out in order that the part of reality which is at stake be translated into law and therefore legally enforceable. If we look at the text of the judgment alone, we can see how much the performance of the law is routine, made up of stereotypes, schemes and narrative paradigms: "The trial process itself is a complex of pragmatic interactions each one of which individually, and all of which collectively, are themselves discursive constructions, their very intelligibility depending upon their character as such" (Jackson 1988, 88).

The Court's judgment presents the facts as follows:

> Defendant 1A is prosecuted for: forming a gang organized to prepare and commit terrorist acts, causing death with premeditation, committing acts of barbarism, possessing and using weapons and attempting to manufacture explosives in violation of the provisions of the law as part of a collective plan to disrupt public order by means of intimidation and violence, which is envisaged in the event of a repeat offence, attempting to join a terrorist organization collectively and in an organized manner, inciting and persuading others to commit terrorist acts, and advocating terrorism, holding public meetings without prior authorization, carrying out activities in an association that is not approved in accordance with Articles 218-1, 218-1-1, 218-2, 218-5, 218-7 and 218-8 of Law 03-03 of 28 May 2003 on the fight against terrorism as amended and supplemented by Law 86-14 of 20 May 2015 and Articles 114, 154, 156, 393, 394, 395, 399 of the Criminal Code and Chapters 5 and 8 of the Dahir regulating the right of associations and Chapters 3 and

> 8 of the Dahir relating to public gatherings of 15 November 1958 as amended and supplemented on 10 April 1973 and 2 July 2002. (Ch.crim., decision no 120, file 59/2019/2630, session of 30 October 2019, 8)

There is no need to go back over what is known about judicial factuality (Lenoble and Ost 1980; Latour 2002; Dupret 2011): a formatted construction, composed in part of obligatory mentions, oriented to judicial ends, formulated in terms that can be legally instrumentalized, taking the form of a linear narrative, concerned with formal correctness, without apparent asperities, unambiguous, univocal; transformed into a disengaged document, in Lynch's terms (Lynch 1993, 287). "Most of the time, members of the police, the public prosecutor's office and the judiciary have instructions indicating the rules of form and content to be respected. The aim is to present the "facts of the case" in such a way that the judge can use them as the main part of the syllogism of his decision. The "passage of law" begins here. Although the facts are "judicially constructed" and thus the product of information gathering, assembly and narrative coherence (Jackson 1988), their presentation claims to be objective. Thus, the judgment—and this is true for any context, authoritarian or not—endeavors to manifest its inclusion in a horizon of normality in which the facts, invested with a recognizable social typicality, are formulated in legally operational terms (Sudnow 1965), while offering a polished structure that protects them from being challenged.

The "facts" are the result of a storytelling operation whose truth is not so much a matter of weighing up the various elements of the story and their evidential support as a matter of overall plausibility (*Gestalt*; Jackson 1988, 61–64, citing Bennett and Feldman 1981). Their structure is naturally influenced by the ability of their writers to present information in the forms accepted by the legal institution, to follow the narrative patterns in use in the courts. These patterns largely correspond to the rules formulated in codes and other legal texts: "The use of narrative construction and analysis skills allows complex bodies of evidence to be reduced to terms that elegantly fit legal categories" (Jackson 1988, 64). Following Garfinkel (1967), we note how much this search for adequacy to the schemes operative in the judicial institution conditions the action of all the protagonists, magistrates, lawyers, and litigants, each from their own perspective.

The procedure followed by the court is also carefully outlined. This description of the procedure followed provides proof that the trial abode by the legal sequence and that "things went normally". In the judgment under consideration, this takes the following form:

> Counsel for defendant 1A requests a postponement of the hearing to 18 September 2019 at 3pm. The defendants were brought before the judge under arrest. The lawyers for the defense and those for the civil parties appeared. The lawyer for defendant 4E challenged the minutes of the preliminary investigation and requested that they be annulled, given that his Swiss client had been interviewed and had signed his minutes without the presence of a sworn translator, thus violating the provisions of article 21 of the Code of Criminal Procedure. The public prosecutor's office rejects the lawyer's request, arguing that the legislator did not prohibit judicial police officers from interviewing an accused in a language other than Arabic if

> they have a good command of that language (Criminal Court, decision no. 120, file 59/2019/2630, session of 30 October 2019, 18).
>
> Defendant 1A answers the question of the lawyer of the civil party 1 that his desire to pledge allegiance to the Islamic State began in 2014 by joining the association "the House of the Qur'ân (Dâr al-Qur'ân)" at the age of 17 where he attended the classes of Sheikh Maghraoui (Ch.crim., decision no 120, file 59/2019/2630, session of 30 October 2019, 19)
>
> The prosecution claims that defendants 1A, 2A, 3A and 1B are being prosecuted for assault on life. After pledging allegiance to DAESH and documenting this fact in a video, and since they intended to attack Western tourists and decapitate them in the DAESH manner by separating their heads from their bodies, and after several attempts, they finally crossed paths with these two Scandinavian tourists on the night of Sunday 16 December 2018. (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 35)
>
> As a last word before sentencing, defendants 1A, 2A and 3A repeated the Islamic expression "We pray to God to avenge us". As for defendant 2A, he recited the Surat al-Kafirun (the infidels): "O you infidels! I do not worship what you worship. And you are not worshippers of that which I worship. I am not a worshipper of what you worship. And you are not worshippers of what I worship. To you your religion, and to me my religion". (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 41)

In the sentences that followed, the judges—who, we must repeat, do not differ from their colleagues in more liberal contexts—retained only the terror and violence, ignoring any politico-religious motivation and treating the accused as common criminals:[4]

> Given that it has been confirmed in this Court through the study of all the documents in the file and based on the various debates that the defendants (1A, 2A and 3A) have confessed to the facts during all stages of the investigation, that they agreed from the beginning on the formation of a terrorist cell, and that this cell pledged allegiance to DAESH and its caliph Abu Bakr al-Baghdadi before beginning to prepare their attacks by coordinating their actions with the other members of this cell to try to manufacture explosives and poison to perpetrate several terrorist acts; as they showed in detail before this Court that they had tried to execute several tourists with knives before succeeding in beheading the two Scandinavian tourists, adding that they refused to present any apology to the families of the victims and that they wanted the death penalty sentence to be applied quickly. All these elements convinced this Court of the guilt of the defendants [which] decided as a result to confirm the judgment of the first instance (death penalty). (Ch. crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 137)

Law 03-03, the Penal Code and the Code of Criminal Procedure specify the procedure to be followed for the investigation and trial of terrorism offences. The part of the judgment devoted to procedure is concerned with systematically establishing and recalling its compliance

4 The de-politicizing of the debates is one of the features of, though not exclusive to, trials in authoritarian regimes.

with these provisions, which could be called its inclusion in the horizon of normality of a trial of this kind. This procedural sequence also offers the defense a space for interference. As the display of procedural correctness is, for the prosecution, a major resource in its claim to conformity with the canons of the good administration of justice in a state governed by the rule of law, the defense does not take too many risks in playing on this terrain and bringing out the flaws in a procedure that the prosecution is so keen to respect in form. To illustrate this point, we reproduce this other extract from the judgment in which various requests made by the defendants' lawyers appear:

> The first lawyer for civil party 1 intervened, requesting that Sheikh Maghraoui be summoned to confront the defendants, on the grounds that he had a direct link with the case since his name was mentioned several times by the defendants themselves.
> The lawyer for civil party 2 intervened to confirm the request submitted by his colleague and to ask for a complementary investigation by calling other witnesses.
> The public prosecutor responded by stating that, given the confessions of the accused, there was no point in calling witnesses.
> The lawyer for accused 3B intervened to ask the public prosecutor to verify what the accused had said about Sheikh Maghraoui.
> Defendant 4E's lawyer took the floor to point out that civil party 1's defense had not formulated its requests within a legal framework, and suggested that these requests should not be granted.
> The first lawyer for civil party 1 made a request to summon Mr. Mustafa Ramid and Sheikh Maghraoui himself, who was allegedly involved in the radicalization of most of the defendants.
> The second lawyer of civil party 1 explained that, during the trial in first instance, the Moroccan State was represented by the lawyer Abdelatif Ouahbi, while Sheikh Maghraoui was never summoned. He insisted on the need to summon the latter to carry out a complementary investigation.
> The lawyer of the accused 2G intervened to ask for the authorization of a special power of attorney on behalf of his client.
> And after deliberating on the seat, in the name of His Majesty the King in accordance with the law, the Court accepted the request presented by the lawyer of the accused 2G and decided to postpone the processing of the other requests. (Criminal Court, decision no. 120, file 59/2019/2630, session of 30 October 2019, 21-22)

Finally, the Court strives to motivate its sentence, i.e. to give the reasons that led it, both in terms of the facts and the rules of law, to deliver its judgment. We speak, for our part, of the construction of the "legal relevance" by which a reality is categorized by the law (Assier-Andrieu 1987):

> While defendants 1A and 2A were in the house of defendant 3C doing some building work, they started to define the targets they were going to attack, which are the following: 1) Western tourists who flock to Marrakech, since they are the subjects of inferior countries that participate in the war against DAESH. Therefore, it is necessary to target remote tourist locations within the city of Marrakech in order to easily decapitate the tourists there; 2) Attacking the gendarmes who are located at the security checkpoints in

> order to kill them and seize their service weapons. (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 49)

> Defendants 1A and 3A wrote on a piece of paper that they pledged allegiance to Abu Bakr al-Baghdadi and that the jihadist acts they intended to commit with the other members of this jihadist cell are a reaction against infidels and miscreants, and revenge and support for their jihadist brothers under the flag of DAESH who are being bombed and killed in Syria. Following this, defendant 1B hung the DAESH flag on a bedroom wall in front of which they sat and filmed themselves pledging allegiance, all four accompanied by defendant 2A, carrying a large knife and reading the text of the oath of allegiance (*bay'a*). (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 57)

Like "facts", which are the product of collection, selection, presentation and assemblage, the legal rules applied to these facts are the product of a "mini-narrative" (Jackson 1988, 98). This narrative structure is present even in the most conceptual, abstract and general formulations of the legal rule. It is also found in the characterization operation. The syllogism at work in this operation is not based on a mechanism of correspondence between the rule and the facts, but on a relation of coherence between the major and the minor, on the comparison of the narrative unit relating to the facts and the narrative scheme underlying the legal rule (Jackson 1988, 101). As such, the characterization is prejudged, since the organization of the narrative is a function of the legal classifications to which the case is to be related. Characterization does not reflect the application of a principled law to objectively established facts, but of legal narratives abstracted from their context of enunciation to facts whose narrative has been constructed with a view to the forthcoming characterization.

5. NORMALITY BY EXCESS AND TRUTH BY DEFAULT: THE AUTHORITARIAN EXTRAORDINARY

Adjudication in an authoritarian context is most often achieved against a background of normality. It claims to be a practice that meets all the criteria of the proper administration of law and justice (due process of law), the embodiment of the rule of law in all that it entails in terms of legality and procedure. It is therefore in relation to this displayed normality that adjudication in an authoritarian context must be understood, the particular character of which is manifested in two, possibly cumulative, ways: either by an excess of normality, i.e. a display of normality that seems, to competent members, excessive, redundant, superfluous, exclusively formal; or by default, when what the ordinary course of justice would have led one to assume is surprisingly absent from the text of the judgment.

To borrow a well-known expression from Garfinkel (1967), the horizon of normality in the ordinary world is made up of an infinite number of small things that are seen, i.e. known and recognized by any competent member of society, but unnoticed, in the sense that they are not the object of a reflexive pause on their existence, their meaning, and their implications. This is the case with justice, the performance of which is made up, throughout, and particularly for its professionals, of these unproblematic evidences. In the case of extraordinary justice, however, normality is displayed in excess. This is because these evidences, Garfinkel's seen

but unnoticed things, are produced in such a surplus manner that they become remarkable. Conversely, in these authoritarian configurations, these ordinary evidences can be missing, strangely absent. This absence then becomes remarkable, it is normality by default.

The notion of typicality, which we borrow from phenomenology (Schütz 1966), semiotics (Greimas and Courtès 1979; Jackson 1988) and ethnomethodology (Garfinkel 1967; Sacks 1979; Pollner 1987), can be of some help here. It is understood, as discussed in the previous section, that judges aim to produce a decision that corresponds to the ideal type of good trial, one that has been conducted in the proper manner. In doing so, judges are concerned with "doing being legal", "thinking and acting as lawyers, good judges" (Jackson 1988; Schauer 1991), communicating their professionalism and thus their proper conduct of the trial, both in form and substance. In order to do so, these judges put forward the typical characteristics of an ordinary trial. In this sense, it can be said that the typicality of the trial is, in reality, a typification, a practical accomplishment of the judge, an achievement.

In the context we are dealing with, however, this production of typicality, the typification carried out by the judges, no longer appears as routine, but as staged. A close reading of the trial text shows that the judges "overplay" its correspondence to the ideal type. Here follows an example:

> Given that it has been confirmed to this Court through *the study of all the documents* in the file and by relying on *the various debates* that the accused confessed to the facts during all the stages of the investigation, that *they agreed from the outset* to form a *terrorist cell* and that this cell pledged allegiance to DAESH and its caliph Abu Bakr al-Baghdadi before beginning to *prepare their attacks* by *coordinating their actions* with the other members of this cell in an attempt to manufacture explosives and poison in order *to carry out several terrorist acts*. (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 137; our italics)

In this excerpt, the judge repeats, in a tautological manner, that the procedure was achieved as it should and that the accused committed what they were accused of. We note that tautology is often used as an efficient mode of imposing one "truth". The work of typification does not only consist of a predicative operation relating a given occurrence to the paradigm of the "normal trial". This work is first carried out ante-predicatively, below any intentional production of the specific characteristics of the judgment, which explains why many cases are prejudged, not being the object of a real argumentative work, but rather being treated according to the category in which they have been intuitively classified. It is often only afterwards, when the obligation to give reasons for the judgment is imposed, that the operation of attributing a correspondence between the rule and the facts of the case takes place. Thus, before being models serving as a basis for comparison, types are "structures of relevance".[5]

These structures of relevance are at work in all forms of trial, not only in those of an ordinary type. In the latter case, these structures contribute to the embedding of cases in judicial routine. However, they are also at work in extraordinary trials. Thus, in our case, the fact that the case belongs to the "terrorism" type is perceived ante-predicatively. In this case, we often

5 Schütz (1966, 128) speaks of an "'index' pointing to a problem".

observe the emergence of a tension between the desire to "make law" in an ordinary way and the ante-predicative perception of an exceptional case that must be resolved in an extraordinary way. The possibility of rendering extraordinary justice is all the more open as, on the one hand, judges have a legislative arsenal that derogates from common criminal law and, on the other hand, the preponderance of the executive and its police gives exorbitant weight to public action. In this configuration, the extraordinary becomes the ordinary, the exception becomes the rule, and one can legally derogate. On the one hand, the fact that the trial belongs to the "terrorism" type is obvious; on the other, the use of a specific repressive procedure is trivialized (see above the excerpt starting with "Defendant 1A is prosecuted for: forming a gang").

There remains the great unthought of this judgment: Islam. Everything indicates that the defendants had a religious motivation. The investigation documents attest to this at various levels:

> Defendant 1A maintains that he wanted to join DAESH since he considered that this organization applied the *sharí'a t*o the letter. He confessed that, before the examining magistrate, he had called the heads of Arab states disbelievers and tyrants, and that he worked as an imam in two mosques in the region of Marrakech, one in al-Ouidane and the other in al-Ourika, and that these two mosques belonged to the association "the House of the Koran" of Sheikh Maghraoui. He argued that he would not ask for forgiveness from the families of the two victims while millions of Muslims were waiting for their apologies and that it was in 2011 that he felt the urge to go and wage jihad in Syria, especially after the congress organized by President al-Sissi in Egypt where more than 500 Muslim scholars called for jihad in Syria. (Criminal Court, decision no. 120, file 59/2019/2630, session of 30 October 2019, 19)

> The accused 3D denies everything that has been alleged against him and claims that he works as an imam paid by the Ministry of Habous and Islamic Affairs and that he was also paid by the parents of children to whom he taught the Qur'an (Criminal Court, decision no. 120, file 59/2019/2630, session of 30 October 2019, 27)

And yet, there is no trace of this motivation in the judgment itself, at most a mention of DAESH and the connotated word "jihadist":

> The BCIJ investigation states that defendant 1A claimed that he turned to religion in 2009 and that in 2010 he joined a mosque in the small municipality of Lgharbia to learn the Qur'an and the rules of intonation, and it was at this time that he met some of the defendants with whom he discussed religious topics, the war in Syria and the various jihadist movements and organizations, as well as the legitimacy of their jihadist operations. From this, they concluded that the ruling power in Syria was infidel and unbelieving and that it became necessary to go and wage jihad in Syria alongside the jihadist organizations there and that after the appearance of DAESH, to which he pledged allegiance, he tried to join this organization together with other defendants. (Ch.crim., decision no. 120, file 59/2019/2630, session of 30 October 2019, 43)

Thus, the reason why the defendants undertook their criminal action, namely their desire to translate their jihadist conception of Islam into targeted action against the ungodly (*kâfir*, pl.

kuffâr), is obliterated. This omission is not a Freudian slip (*Fehlleistung*), but is, on the contrary, fully assumed by the members of the Court:

> Yes, we discussed yesterday in my office the types of terrorism and I made it known [...] that we reject the term "Islamic terrorism". You know [...] that we have been invited to participate in the work of the International Criminal Court where one of the foreign speakers mentioned this term on several occasions. Our delegation withdrew immediately. We categorically reject this term.
> There has never been any question of convicting an accused person on the basis of what could be called an act of Islamic, Islamist or religious terrorism.
> I would add that there has never been any question of political terrorism in Morocco either (personal interviews, 5 March 2020).

The political or jihadist nature of the acts incriminated is absolutely obvious to all competent observers of the trial, but its evacuation from the motivation of the judgement allows a double thing: on the one hand, to avoid opening a debate, whose outcome is uncertain, on Islam, its sources and interpretations; on the other hand, to reinforce the national master-narrative on the unique Islam, that of Golden Mean (*wasatiyya*)—embodied by the King who is, in the very terms of the Moroccan Constitution (Article 41), the Commander of the believers (*amîr al-mu'minîn*)—which cannot be questioned by the extremes and is the only one to have the right to be recognized and to speak. The logical articulation of the reasoning is that there is only one Islam, Golden Mean Islam, which relegates any jihadist motivation into unjustifiable deviance and criminality, or even apostasy.

The ante-predicative typification that might have been expected, "Islamic terrorism", is challenged and defeated by the intentional typification of the magistrates. The type to which the case clearly belonged was evacuated in favor of a characterization that was both intuitive (terrorism) and counter-intuitive (religiously unfounded). In a surrealistic manner, the magistrates affirm, performatively and despite the evidence to the contrary: "this is not a trial of Islamic/Islamist terrorism". This denial of the obvious is functional. It is also the mark of a justice system which the authoritarianism of the political system leads to, ante-predicatively, dismiss any form of politico-religious motivation and, therefore, opposition.

The centrality of religion, understood as "Golden Mean Islam", cannot accept the factual recognition of any other conception, all the more so as Moroccan institutions take the King as the Commander of the faithful. If Islam is moderate, it is not pluralist, with the consequence that, paradoxically, moderation becomes an absolute and a limit or, following an expression of the Moroccan media, a "red line". Authoritarianism appears in the imposition of such line.

6. CONCLUSION

As Dusan Bjelic (1999, 232) puts it, when talking about the relationship of translation to reality, meaning is a practice. Drawing on Wittgenstein (1963, 175), for whom translation is bound to "the point of time and a way of using the word", he shows us that the reference of translation, i.e. its reality, is lying in the logic of the occasion, in the game that is played (Bjelic 1999, 248). Far from being reduced to an "invention", as the postmodern vulgate would have

us believe, for which reality is a simulacrum in which fiction and reality merge, meaning is a contextually constrained and teleologically oriented production. In the field of law, this leads to the point that legal work aims at the production of a truth, what we called in the introduction the unremarkable production of a normal judicial narrative, in a relation to reality that is not purely factitious, though it is certainly artefactual.

The mistake is undoubtedly to treat the historical narrative and the judicial narrative, and hence the resulting truths, indistinctly, without taking into account their fundamentally different orientations and purposes. The ways in which these narratives and knowledges are constructed are decisive in this respect. Based on the Iran-Contra affair, which was the subject of a parliamentary enquiry in the United States, Michael Lynch and David Bogen (1996) demonstrate perfectly well the mechanisms of production of an official history, i.e. "the practical methods through which the event was assembled, contested, and stabilized" (Lynch and Bogen 1996, 7). They therefore insist that "*what* a history is about is intertwined on several fronts with just *how* it is written" (9). From this point of view, political/judicial truth is formulated for all subsequent practical legal purposes and seeks to ground a judgement (or to escape its conclusions through plausible deniability), whereas historical truth has no decisional significance and is presented more under the Popperian regime of the falsifiability of always provisional conclusions.

By definition or almost, the judicial narrative is not written with the aim of establishing historical truth, but for the practical purposes of a subsequent legal or judicial use. Beyond its relationship to truth, the judicial judgment contributes to the production of a full-fledged reality. Indeed, it produces and imposes categories, beyond the penalties that result from them. Using a "truth-finding engine" (Lynch and Bogen 1996), it establishes the guilt of an individual by attributing motives and actions to him. One could speak of a performative (Austin 1970) engine for the stating of truth, a "truth-stating engine". Indeed, the pronouncement of the judgement does not consist in describing a fact but rather in creating a state, attributing an identity. It is the very nature of institutions to impose categories on beings and things, as Mary Douglas (1999) has pointed out. In so doing, they objectively modify epistemic reality (Searle 1995), in other words factuality. The judgement is institutive and not constative. Truth and falsity are inseparable from the institutional work that produces them: the guilty party is guilty because he is declared guilty and sentenced.

There is indeed a judicial truth—and a relationship to reality—but it is contingent on the judicial context of the event. Contrary to skeptical conceptions of reality, it is therefore necessary to carry out a praxeological re-specification of reality, which considers it in terms of what it is established for. This work involves operations of exhibition and obliteration of the obvious, well beyond what a historical account would have required. To use Eric Livingston's (1995) distinction, texts can be in relationships of overdetermination, underdetermination, and adequate determination of meaning, that is, both their totality and their details provide contextual clues as to how they are to be read. In the case of court judgements, the tendency is to overdetermine contextual clues. But where in ordinary contexts there is an unremarkable production of normality, in exceptional contexts this production becomes remarkable because of an overdetermined gap between, on the one hand, the facts-as-judicially-established and the facts-as-good-sense-can-suppose; and, on the other hand, the motivations-as-ju-

dicially-formulated and the motivations-as-reasonably-imagined. Like Magritte's painting of a pipe entitled "This Is Not a Pipe", there is a tendency in authoritarian contexts' judicial proceedings concerning clearly politically motivated acts, including a political conception of religion, to ensure that what is claimed by its perpetrators to be motivated by Islam be clearly expunged of any reference to it.

On this basis, the state can create perpetrators of terrorist acts which belong to a type of criminality that is not religiously or politically motivated, thus to ordinary law. It can even do so by filtering out the crime, throughout the trial, from its explicit motives, including those appearing at earlier stages of the proceedings. This is, in fact, what the filtering work consists of. However, for this work to be effective, it must imperatively respect the forms, since it is the forms that are instituting, not the veracity of the contents. This is the reason for the fussy overload of the procedure, the overdetermined aspect of the judgement: the form is not supported by the substance and, though technically sufficient, is failing to convince. In the ordinary world, including the routine world of legal practice, form and substance are seen to go hand in hand. This is the reason for the stir that accompanies the release on the grounds of form of people who are presumed to be guilty. These disruptive experiences reveal, to the astonishment of the lay public and the annoyance of professionals, the two threads of justice that are so often so well woven that one imagines one is dealing with one and the same texture. This weaving is a performance at work in each case, from its beginning to its end, a continuous accomplishment by which the actors of the procedure attach facts produced in the lay world to their legal characterization, following the stages of their procedural validation. The nature of a performance is to be more or less successful (or to fail). Success implies the good state of both threads. In this case, however, only the formal thread is strong and is then strengthened in order to mask the weaknesses of the second.

It is tempting to ask what are the reasons for all this exhibition work. The procedural emphasis is easily understood. As we know, a game only exists through its rules, so it is a question of situating the action (the trial) in a typology (the rule of law) by displaying, in an excessive, overdetermined manner, knowledge of the rules and their respect. What about the negative exhibition, the default affirmation that there is nothing to see? Even if they are eliminated in the judgement, religious motivations are present for the public, if only through the media. The conviction for terrorism appears *ipso facto*, there, as a condemnation of terrorism for jihadism, which refers to an explicit positioning of the convicts in relation to Islam, and in particular to Islam as affirmed in Morocco: Golden Mean Islam. It is not therefore a question of the Moroccan authorities concealing the jihadist motivations of those convicted. It is a matter of not recognizing them, knowing that they are known, and, more broadly, of not recognizing the existence, acceptability or even disputability of a version of Islam that is not Golden Mean Islam, i.e., a clear and assertive conservatism that is generally tolerant, provided that individual deviations remain discreet. It is the monopoly of this version of Islam that the judgment helps to reinforce by denying the very existence of other interpretations. Ironically, however, not discussing the jihadist version of Islam is not only a refusal to give it any legitimacy in the context of a trial where the defendants could rely on political or religious motives. It also means asserting, with all the force of the state apparatus, in the violently asymmetrical framework of a trial for terrorism, the indisputability of the version of Islam in

use in Morocco, which, moreover, is not a version of Islam but Islam alone, thus making Islam itself indisputable. The indisputability of a reference, religious or/and political, is, beyond the exceptional form of justice that was rendered, a marker, and a strong one, of authoritarianism.

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